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June 7, 2005

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VIA HAND DELIVERY

Hon Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Joint Petition for Arbitration of NewSouth Communications Corp., et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*
Docket No. 04-00046

Dear Chairman Miller

Enclosed are the original and fourteen copies of BellSouth's *Reply to Joint Petitioners' Opposition*. Copies of the enclosed are being provided to counsel of record

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized loop that starts under the word "yours", goes up and over the word "Very", and then loops back down to the word "yours".

Guy M Hicks

GMH ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Joint Petition for Arbitration of NewSouth Communications Corp., et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*

Docket No. 04-00046

**BELLSOUTH TELECOMMUNICATIONS, INC. REPLY
TO JOINT PETITIONERS' OPPOSITION**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Reply to the Opposition to Remove Certain Issues to the Generic Proceeding ("Opposition") filed by NewSouth Communications Corp ("NewSouth"), NuVox Communications, Inc. ("NuVox"), and Xspedius Communications, LLC ("Xspedius") (collectively referred to as "Joint Petitioners").¹ BellSouth files this reply to address the Joint Petitioners' arguments and additional requests for relief made in the Opposition, correct statements made by the Joint Petitioners in the Opposition, provide the Tennessee Regulatory TRA ("TRA" or "Authority") with information omitted by the Joint Petitioners refuting their arguments, inform the TRA of recent decisions that support BellSouth's position, and to request that the TRA ignore portions of the Opposition because they are improper and irrelevant.

¹ KMC Telecom V, Inc and KMC Telecom III, LLC filed a withdrawal with prejudice of its petition for arbitration on May 27, 2005. Thus, the KMC entities are no longer a party to this proceeding.

INTRODUCTION

In its post-hearing brief, BellSouth requested that the TRA move Arbitration Issues 26, 36, 37, 38 and 51 (including subparts) to the TRA's Generic Proceeding (Docket No. 04-00381) for consideration and resolution.² BellSouth based this request on the fact that the *TRO Arbitration Issues* relate to the Federal Communication Commission's ("FCC") findings in the *Triennial Review Order*, FCC 03-36, 18 FCC Rcd 16978 (Aug. 21, 2003) ("*TRO*") and are similar if not identical to *TRO* issues being addressed in the Generic Proceeding.³ On May 20, 2005, the Joint Petitioners filed a seven-page Opposition to BellSouth's request, which consisted of a single paragraph. In the Opposition, the Joint Petitioners attempt to respond to BellSouth's request as well as raise additional claims of relief relating to this and other proceedings. For the foregoing reasons, the TRA should reject the Joint Petitioners' arguments and grant BellSouth's reasonable request to move identical or common issues to the Generic Proceeding so that all entities can participate in their resolution.

ARGUMENT

A. BellSouth's Request Does Not Impinge on any Section 252 Rights.

First, the Joint Petitioners contend that they have a right to have the *TRO Arbitration Issues* decided in a Section 252 arbitration. The only authority cited by

² As an alternative request, BellSouth requested in its post-hearing brief that the TRA defer ruling on these issues until its ruling in the Generic Proceeding to avoid inconsistent rulings

³ Specifically, as set forth in the BellSouth/CLEC agreed-upon Regional Issues Matrix for all Generic Proceedings in BellSouth's region, Issue 26 in the arbitration is identical to Issue 14 in the Generic Proceeding, Issue 51 in the arbitration is virtually identical to Issue 29 in the Generic Proceeding, and Issues 36-38 in the arbitration are encompassed within Issue 26 in the Generic Proceeding

the Joint Petitioners is Section 252(b)(1) of the Telecommunications Act ("Act"), which simply provides that a party has the right to "petition a State commission to arbitrate any open issue." As evidenced by the filing of the arbitration petition, their participation in the hearing, and the filing of post-hearing briefs, the Joint Petitioners have fully availed themselves of their right under the Act to request arbitration of "any open issue."

Further, the Joint Petitioners' own actions belie their argument as they jointly requested with BellSouth to move an arbitration issue – Issue 23 – to the Generic Proceeding for consideration and resolution. The TRA granted this request on May 11, 2005. It is disingenuous for the Joint Petitioners to argue that Section 252(b)(1) prohibits the TRA from moving common issues to the Generic Proceeding when they have already agreed to do so for another arbitration issue. Clearly, the Act does not give the Joint Petitioners the sole determination as to when an issue can or cannot be moved from an arbitration proceeding to a generic proceeding established by the TRA to address issues under federal law that impacts all entities.

To the contrary, it is the TRA that has the discretion to make such a decision. Specifically, TRA Rule 1220-1-2.22(2) provides:

[T]he TRA . . . may, on its own motion or the motion of any party, . . . consolidate cases, . . . or otherwise order the course of proceedings in order to further the just, efficient and economical disposition of cases consistent with the statutory policies governing the TRA . . .

The above-TRA Rule is entirely consistent with Tennessee Civil Procedure Rule 42.01, which provides that "[w]hen actions involving a common question of law or

fact are pending before a court, the court may order all the actions consolidated or heard jointly and may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay....”

Tellingly, the Joint Petitioners cited to these same rules in persuading the TRA to allow four different companies to file a joint petition for arbitration, which the TRA granted.⁴ The Joint Petitioners made this argument even though there is nothing in the Act that explicitly allows multiple parties to jointly request arbitration pursuant to Section 252. The Joint Petitioners’ arguments and the TRA’s finding, all confirm that the TRA has the discretion to procedurally manage its dockets as it sees fit in a Section 252 arbitration.⁵

Further, the TRA has a long history of resolving disputes relating to Section 251 obligations via a generic proceeding, including (1) the Generic UNE docket in which the TRA established rates for UNEs under Section 252 (Docket No. 97-01262); (2) the Generic UNE Line Sharing docket in which the TRA established rates for line sharing and riser cable and unbundled network terminating wire (Docket No. 00-00544); and (3) the Generic Performance Measures Docket in which the TRA established uniform performance measures for all CLECs (Docket No. 01-00362).

Importantly, in establishing the Generic Performance Measures Docket, the TRA addressed BellSouth’s request to create a generic docket that would establish

⁴ See *Order Accepting Petitions for Arbitration*, Docket No. 04-00046, *Joint Petition for Arbitration of NewSouth Communications Corp, et al, of an Interconnection Agreement with BellSouth* (June 8, 2004)

⁵ The Act does require the TRA to conclude arbitration matters within nine months of filing. See 47 U.S.C. § 252(b)(5). However, the parties have already waived the nine-month deadline in this proceeding.

a universal set of performance measures to determine if BellSouth was providing nondiscriminatory access to its Operational Support System ("OSS"). BellSouth filed the request for a generic docket because multiple CLECs were raising the same issue in separate arbitration proceedings. In consolidating BellSouth's request for a generic docket (Docket No. 00-00392) with the preexisting Third Party Testing Docket (Docket No. 99-00347) and establishing a generic docket, the TRA held "that the establishment of a single set of performance measurements applicable to all interconnection agreements is desirable."⁶ Accordingly, the TRA established a new docket "for the purpose of establishing generic performance measures, benchmarks, and enforcement mechanisms" *Id.* BellSouth is simply asking for the same ruling here regarding common issues in a pending arbitration proceeding and a preexisting Generic Proceeding involving all CLECs.

Finally, BellSouth's request does not require the TRA to decide these issues outside the context of a Section 252 arbitration. Rather, it simply asks that the TRA address the *TRO Arbitration Issues* in conjunction with the TRA's consideration of identical or similar issues in the Generic Proceeding. Thus, the Joint Petitioners will be afforded the same opportunity to present the same arguments on the same issues in the Generic Proceeding that they have already presented in the arbitration proceeding. Accordingly, all due process rights will be preserved by allowing all CLECs to participate in the determination of these universally applicable issues.

⁶ See Order Consolidating Docket Nos 99-00347 and 00-00392 Into Docket No 01-00193 and Opening Docket No 01-00362, Docket No 01-00362 (May 15, 2001)

B. The Decisions of Other Commissions Support BellSouth's Position.

Next, the Joint Petitioners argue that the TRA and other state commissions have already rejected BellSouth's arguments. While BellSouth acknowledges that the Florida Public Service Commission ("FPSC") denied BellSouth's request, on June 1, 2005, the South Carolina Public Service Commission ("SCPSC") granted it over the objection of the Joint Petitioners.⁷ Further, in the context of other arbitration proceedings, the North Carolina Utilities Commission ("NCUC") and the Georgia Public Service Commission ("GPSC") have ruled in a similar fashion. Specifically, the NCUC moved issues in a BellSouth/AllTel Section 252 arbitration proceeding to generic proceedings over the protest of AllTel. In reaching this conclusion, the Chair of the NCUC stated:

After careful consideration, the Chair concludes that good cause exists to consider the above issues within the context of their respective generic dockets. The Commission has frequently had recourse to consider generic issues that arise in arbitrations within the context of a generic docket. Each of the above issues are in fact under consideration in the generic dockets, and it would promote judicial efficiency and justice for them to be considered there.⁸

⁷ The SCPSC has yet to issue a written order. Also, the transcript from the SCPSC hearing in which this decision was made is not yet available.

⁸ *In re Petition of AllTel Communications, Inc. for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 with BellSouth Telecommunications, Inc.*, Docket No. P-514, Sub 18, N.C.U.C. (Apr. 9, 2001), 2001 WL 1756716 *1. The Joint Petitioners may argue that the decision by the NCUC in the BellSouth/DeltaCom arbitration conflicts with this above-cited order. See *In re Petition of Arbitration of ITC DeltaCom, Order Denying BellSouth Motion to Remove Issues*, Docket No. P-500, Sub 18, N.C.U.C. (Jul. 11, 2003) 2003 WL 21757758 *1 ("DeltaCom Order"). This decision, however, is inapplicable because it involved a request by BellSouth to remove issues from the arbitration that were already addressed in BellSouth's 271 Docket, that were better addressed in the CCP, or which BellSouth contended were outside the jurisdiction of the NCUC. Unlike the instant matter, BellSouth's request did not involve moving generic issues from a Section 252 arbitration to a pre-existing generic proceeding that will be addressing identical or similar issues. In any event, this decision entirely contradicts the Joint Petitioners' Section 252(b)(1) argument and supports BellSouth's argument as the NCUC stated in the DeltaCom Order that "[w]hile the Commission in the past has deferred arbitration issues to other docket, such

Similarly, the GPSC *sua sponte* and after the evidentiary hearing moved issues asserted in a BellSouth/MCI Section 252 arbitration proceeding to a generic docket for consideration and resolution. In doing so, the GPSC stated: "This issue has arisen in subsequent arbitration proceedings currently pending before the Commission. The Commission finds therefore that it is equitable and efficient for the Commission to address this issue along with Issue 46 in a generic proceeding (Docket No. 13542-U). The Commission will hold expedited hearings on these issues."⁹

Conversely, the TRA decisions cited by the Joint Petitioners are inapplicable to the instant matter. First, the Joint Petitioners cite to the TRA's refusal to remove certain arbitration issues in the BellSouth/DeltaCom arbitration.¹⁰ In that proceeding, the TRA declined BellSouth's specific request to (1) dismiss from the arbitration Operational Support Systems ("OSS") issues that had already been addressed by the TRA in BellSouth's 271 docket (Docket No. 97-00309); and (2) dismiss from the arbitration issues that BellSouth believed were better addressed in the CCP, which is an industry collaborative and not a TRA generic proceeding. Accordingly, this decision is factually distinguishable from the instant dispute because it did not involve a request to transfer issues from an arbitration to a TRA generic proceeding that will address the same issues raised in the arbitration.

deferral is within the sound discretion of the Commission " *Id* at *2

⁹ *In re MCIMetro Transmission Serv , LLC*, Docket No 11901-U (Ga. P S C) (Feb 6, 2001) 2001 WL 391562 *10, 14

¹⁰ *In re Petition for Arbitration of ITC DeltaCom, Initial Order Regarding BellSouth's Motion to Remove Issues and Other Pre-Hearing Procedural Issues*, Docket No 03-00119 (Aug 20, 2003)

Second, the Joint Petitioners cite to the TRA's decision in the *In re: Petition by ICG Telecom Group, Inc.* arbitration proceeding (Docket No. 99-00377) to support their argument. There is nothing in this decision, however, that remotely addresses the issue currently before the TRA. Therefore, the Joint Petitioners have not cited to any TRA precedent that undermines BellSouth's arguments or request for relief

C. All of the TRO Arbitration Issues Are Being Addressed in the Generic Proceeding.

Third, the Joint Petitioners claim that some of the *TRO Arbitration Issues* are not being addressed in the Generic Proceeding. Significant with this argument, however, is that the Joint Petitioners concede that two arbitration issues – Issue 26 (commingling) and Issue 51 (EEL Audits) -- are being addressed in the Generic Proceeding. See Opposition at 4. Further, as to those Issues that the Joint Petitioners contend are outside the Generic Proceeding (Issues 36-38 dealing with line conditioning), they are incorrect. Issues 36-38 are encompassed within Issue 26 of the Generic Proceeding regarding routine network modifications. Indeed, the *TRO* has stated that line conditioning can be “properly seen as a routine network modification” (*TRO* ¶ 643). BellSouth made this clear in its recent Motion for Summary Judgment and or Declaratory Ruling filed in the Generic Proceeding on June 2, 2005, wherein BellSouth asked that the TRA resolve line conditioning issues within Issue 26 of the Generic Proceeding. Consequently, BellSouth submits that all of the *TRO Arbitration Issues* will be addressed in the Generic Proceeding.

D. A Decision in the Arbitration Will Have Precedential Value in the Generic Proceeding.

Fourth, the Joint Petitioners claim that "BellSouth's argument to transfer or hold these issues in abeyance because of the impact the Authority's decision may have on other Tennessee carriers is also a red herring." Opposition at 5. The Joint Petitioners are absolutely incorrect. Issues common to all CLECs relating to the *TRO* will be addressed in the pending arbitration as well as the Generic Proceeding. As a result, the TRA's decision on these issues in the arbitration will impact (either directly or indirectly) all CLECs. The Joint Petitioners concede this point in the Opposition as they state that arbitration decisions "do establish precedent and can form the basis for subsequent orders of general applicability by a state commission." See Opposition at 5, n. 10. Indeed, in the Kentucky hearing, Joint Petitioner witness Russell testified that at least one of the issues would be common to carriers other than the Joint Petitioners:

Q. Okay. In the sheets that I'm looking at, the Joint Petitioners' issue matrix, BellSouth has, at Issue 51, that the issue – they're proposing it be addressed in the generic change of law proceeding. That was not one of the issues listed in the joint motion. Is this matter common to all carriers, and do you think it would be better addressed in the generic proceeding or . . .

A. It would be common to carriers that use EEL circuits. I'm not familiar with the business plans of most other carriers, so it may be appropriate for the generic. I'm not certain about that.

See Kentucky Transcript Excerpt at 40-41, attached hereto as Exhibit A.

Accordingly, the *TRO* Arbitration Issues should be addressed in the Generic Proceeding, where all affected entities will have the opportunity to be heard on these issues and the TRA can render a single decision applicable to all entities. In addition to duplicating resources, addressing these issues in multiple dockets also presents the risk of inconsistent decisions being rendered in this docket and the Generic Proceeding, especially when as here the TRA panel resolving each docket is different.

E. The Joint Petitioners Will Not Be Prejudiced by BellSouth's Request.

Fifth, the Joint Petitioners repeatedly argue that the rights afforded by the *TRO Arbitration Issues* are critical to their business plans and that they would be prejudiced by a delay of the arbitration decision. The Joint Petitioners claim of prejudice rings hollow in light of the fact that (1) the parties jointly waived the nine-month statutory deadline for resolving arbitration proceedings under the Act; (2) the Joint Petitioners agreed to implement the *TRO* rulings in the new, arbitrated agreement, see Joint Petitioners' Motion for Emergency Relief, Docket No. 04-00381 at ¶ 2; (3) the Joint Petitioners' current agreement has not been amended to reflect the *TRO*, even for those rights that were not impacted by subsequent court or FCC decisions, (4) the hearing of the Generic Proceeding will take place September 12-15, 2005; and (5) BellSouth has sought, via its Summary Judgment Motion, resolution of the majority of the *TRO Arbitration Issues* prior to the hearing

Of course, the Joint Petitioners do not claim to be prejudiced by the fact that they have agreed to move arbitration issues impacted by the *TRRO* to the

Generic Proceeding for consideration and resolution because those issues are primarily beneficial to BellSouth. Thus, at its essence, the Joint Petitioners' Opposition is an attempt to obtain the benefits of the *TRO* prior to implementing the less-beneficial components of the *TRRO* at the expense of all CLECs. The TRA should reject such an outcome.

F. The TRA Should Ignore Arguments Raised by the Joint Petitioners Not Related to the Instant Dispute.

Sixth, the Joint Petitioners improperly injected irrelevant arguments relating to other proceedings and issues with its Opposition, all of which the TRA should ignore. For instance, the Joint Petitioners admitted that the TRA afforded the Joint Petitioners a limited opportunity to respond to BellSouth's brief and only as it related to its request to move issues to the Generic Proceeding. Opposition at n.1. Notwithstanding this admission, the Joint Petitioners then launch into a two-page footnote, wherein they attempt to respond to several substantive issues that are wholly-unrelated to the instant dispute.

The Joint Petitioners' attempt to rebut BellSouth's brief regarding substantive issues pending in the arbitration is unauthorized and improper. Further, while BellSouth's disagrees with all of the Joint Petitioners' arguments, BellSouth will not address them here because it would be improper in the context of this dispute. And, unlike the Joint Petitioners, BellSouth means what it says and will not undermine its representations to this tribunal through double-speak. In any event, the TRA should summarily ignore the entire contents of footnote 1 of the Opposition

Next, the Joint Petitioners attempt to address the TRA's recent no "new adds" decision by reraising their "Abeyance Agreement" argument and requesting that the TRA take certain action regarding the *TRRO's* transition plan. These issues are not even tangentially related to the issue currently in dispute, and the Joint Petitioners' arguments represent an improper attempt to collaterally persuade the TRA to take certain actions in its yet-to-be memorialized no "new adds" order.

BellSouth fully explained why the Joint Petitioners' Abeyance Agreement argument is moot, misplaced, factually incorrect, and should be rejected in its response to the Joint Petitioners Emergency Petition filed in Docket No. 04-00381 and thus will not restate them here.¹¹ It should be noted, however, that the Joint Petitioners conveniently failed to inform the TRA that the NCUC and the SCUC have ***rejected*** their Abeyance Agreement argument.¹²

CONCLUSION

For the foregoing reasons and those set forth in BellSouth's post-hearing brief, BellSouth respectfully requests that the TRA move the *TRA Arbitration Issues* to the Generic Proceeding for consideration and resolution, or alternatively, defer

¹¹ To the extent necessary, BellSouth's incorporates its Response to the Emergency Petition herein

¹² *In re Complaints Against BellSouth Telecommunications, Inc Regarding Implementation of the Triennial Review Remand Order, Order Concerning New Adds*, Docket No P-55, Sub 1550 (N C U C) (Apr 25, 2005), *Petition of BellSouth to Establish Generic Docket to Consider Amendments Resulting from Changes of Law*, Docket No 2004-316-C, Commission Directive, (S C P S C) (Apr 13, 2005)

ruling on those issues until the TRA decided the same issues in the Generic Proceeding.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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BEFORE THE
COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

IN THE MATTER OF

JOINT PETITION FOR ARBITRATION OF NEWSOUTH
COMMUNICATIONS CORP., NUVOX COMMUNICATIONS,
INC., KMC TELECOM V, INC., KMC TELECOM III
LLC, AND KSPEDIUS COMMUNICATIONS, LLC ON
BEHALF OF ITS OPERATING SUBSIDIARIES,
KSPEDIUS MANAGEMENT CO. SWITCHED SERVICES,
LLC, KSPEDIUS MANAGEMENT CO. OF LEXINGTON,
LOUISVILLE, LLC OF AN INTERCONNECTION
AGREEMENT WITH NEWSOUTH TELECOMMUNICATIONS,
INC. PURSUANT TO SECTION 252 (b) OF THE
COMMUNICATIONS ACT OF 1934, AS AMENDED,
BEFORE THE PUBLIC SERVICE COMMISSION OF
THE COMMONWEALTH OF KENTUCKY

CASE NO. 2004-00044

TRANSCRIPT OF EVIDENCE

DATE OF HEARING: May 17, 2005

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would have specifically agreed to do something different from what those rules provide in Kentucky. So we've got to specifically agree to do something different or specifically agree to exclude something, otherwise, it's implied in the Agreement as consistent with Georgia law, Supreme Court cases, and the Telecom Act

Q. Let me ask you a clarifying question about the applications of the Georgia law to this Agreement. You don't, by that, mean that any Kentucky-specific rulings from this agency wouldn't be followed by the parties if they weren't enacted in Georgia; do you?

A. You're exactly right. The Georgia law is for the purpose of interpreting the contract, that is, what is included in the contract, if there is a disagreement about, I'd say, whether something would be included in a contract or not. It does not necessarily supersede any Kentucky-specific ruling for things that happen here in Kentucky. It's only for interpretation of the contract.

Q. Let's move on to Issue 51, and this relates to audits, and this is audits for the EFL, E-e-l; right?

A. Yes, as an.

Q. And how is this significant to you, from a commercial or a competitive viewpoint, to have your language in:

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the contract rather than BellSouth's"

A. The TRO, Triennial Review Order, requires that BellSouth have a concern before it conducts an audit of the CLEC's use of circuits. It is important because, without having to establish a concern and enforcing the limited right to use these audits, BellSouth would be free to come to NuVox or go to Expedius or to RMC and review their business records whenever they wanted. That's very intrusive. They are one of our - they are our biggest competitor. They are also one of the company's biggest vendors; that is, we purchase a significant amount of services from them. So we're competing with them and purchasing services from them, and we don't believe that it is appropriate, except in limited circumstances where a concern has been demonstrated, for BellSouth to be able to come in, review NuVox's business records, review records related to our relationship with and the terms that we provide service to our customers. So it is a competitive issue to a large degree.

Q. Okay. In the sheets that I'm looking at, the Joint Petitioners' Issues Matrix, BellSouth has, at Issue 51, that the issue - they're proposing it be addressed in the generic change of law proceeding. That was not one of the issues listed in the joint motion. Is this

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matter common to all carriers, and do you think it would be better addressed in the generic proceeding, or

A. It would be common to carriers that use ERI over-the-roads. I'm not familiar with the business plans of most other carriers, so it may be appropriate for the generic I'm not certain about that.

MR. HEITMANN:

Ms. Dougherty, if I could interject at this point, BellSouth has, in its testimony and in this matrix, asserted about certain issues it would like to see moved to the generic. It is . . .

MR. MEZZA.

I'm sorry, Mr. Chairman. I believe this is - I don't know what Mr. Heitmann is doing.

CHAIRMAN GOSS.

Yeah. I mean, we're in the middle of cross examination here, and I think this is something that the witness - it is something the witness wishes to explain. Certainly, that's appropriate. I'm not sure that we need to supplement the witness's testimony with a statement from counsel. So why don't we proceed.

Q. It's the Joint Petitioners' viewpoint that this audit, should it occur, would be conducted by a third party

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that would be mutually agreed upon by the parties involved; correct?

A. Yes, ma'am

Q. And, to the Joint Petitioners, that means that this independent auditor would be agreed upon prior to the conduct of the audit; is that accurate also?

A. That's correct

Q. Do you see that proposal, on the part of the Joint Petitioners, as being a common industry standard?

A. Well, I know that, as part of this Agreement and in our previous Agreements with BellSouth, the parties - there was - part of the Agreement, with regard to PIU and PIU audits, that the parties would mutually agree to an independent auditor that would conduct those audits.

So I guess it's familiar to both parties that they get together and select auditors in that situation, and we believe that that same regime, if you will, should apply with regard to ERI audits, and the idea behind that, if BellSouth wants to audit the use of circuits with an ultimate design of getting money out of a company, the person that's auditing that should be independent. They should not be beholden to BellSouth. If the parties can agree to an auditor up front, that makes it for a better process and one where there's going to be less disputes

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2005, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
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A handwritten signature in black ink, appearing to read "John J. Heitmann", is written over a horizontal line.